

Durham Research Online

Deposited in DRO:

08 August 2017

Version of attached file:

Accepted Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Martin, Lauren (2013) 'Getting out and getting in : legal geographies of US immigration detention.', in
Carceral spaces : mobility and agency in imprisonment and migrant detention. Farnham: Ashgate, pp. 149-166.

Further information on publisher's website:

<https://www.routledge.com/9781409442684>

Publisher's copyright statement:

This is an Accepted Manuscript of a book chapter published by Ashgate in Carceral Spaces: Mobility and Agency in Imprisonment and Migrant Detention on 09/04/2013, available online: <http://www.routledge.com/9781409442684>

Additional information:

Use policy

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a [link](#) is made to the metadata record in DRO
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

Please consult the [full DRO policy](#) for further details.

Note: the definitive version is: Martin, Lauren. 2013. “Getting out and getting in: Legal Geographies of US Immigration Detention.” in *Carceral Spaces: Mobility and Agency in Imprisonment and Migrant Detention*. Eds. Dominique Moran, Nick Gill, and Deirdre Conlon. Ashgate Publishers, pp. 149-166.

Author: Lauren Martin, Department of Geography, University of Oulu

Acknowledgments: Oliver Belcher, Christina Fialho, Elaine Cohen provided essential commentary during the writing process, and I am indebted to Christina Mansfield, David Fraccaro, Geoff Valdes, Rocío Villalobos, Bob Libal and members of the Hutto Visitation Project for their enthusiasm and ideas. The Mobilities, Borders, and Identity Research Group in the Department of Geography at the University of Oulu, Finland generously supported research and writing this chapter. Any errors are mine alone.

Introduction

This chapter analyzes the spatial politics of US immigration detention from three angles. I first give a general overview of the US immigration enforcement system in order to situate detention in the broader regime of spatial practices used to control transboundary mobility. While immigration has long been linked to both security and crime, mandatory detention has become a key component in the process of deportation, especially under the rubric of post-9/11 counter-terrorism initiatives. Second, I outline noncitizen’s pathways into and out of detention centers to show how specific forms of

legal authority give US Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP) wide discretion to decide who to detain, where, in what conditions, and for how long. I focus on the series of discretionary decisions ICE and CBP officers make about noncitizens' individual cases, tracing detention's legal geography from the perspective of detained women and families at the T Don Hutto Detention Center in Taylor, Texas. Third, moving from the outside in, I analyze how detention visitation programs seek to challenge the detention's isolation, containment, and banishment. These organizations' efforts to access detention centers—or more accurately, the detainees inside—reveal how counties, state legislators, private contractors, and federal agencies claim overlapping authority to regulate detention centers. In addition, visitation programs seek to challenge detention's exclusionary function through companionship and, in doing so, focus on detained migrants' emotional, spiritual, and bodily experiences. Visitation's spatial politics illuminates not only relations of power that enable detention as a spatial strategy of mobility control, but also how citizens and authorized residents confront, negotiate, and contest the spatial practices of US immigration enforcement.

The chapter builds on questions raised during previous research on ICE's detention of noncitizen families (Martin 2011, 2012a, b) and my participation in the formation of a visitation program at the T. Don Hutto Detention Center (Hutto hereafter) in 2010. Hutto is a 512-bed former medium security prison owned by the Corrections Corporation of America (CCA) that was retrofitted to hold families from 2006 to 2009. Half of the facility was converted to detain adult women in 2007, and since the Obama administration's release of families in 2009, the facility has held exclusively women. Whereas my original research project explored the legal figuration

of families and children as legal subjects (Martin 2011), the disciplinary functions of detention-as-deterrence policies (Martin 2012a), and family governance discourses (Martin 2012b), my experience visiting Hutto raised important questions about the spatial politics of challenging detention.¹ To further explore how visitation programs navigated detention's enclosure and isolation, I interviewed current Hutto Visitation Program participants individually and in a focus group in 2011. I knew from conversing with visitation program coordinators that other programs faced bigger institutional challenges accessing detained noncitizens. To provide a more representative picture of visitation's power geometries, I interviewed program coordinators from Sojourners' Immigration Detention Center Visitor Program (New York/New Jersey) and Detention Dialogues (San Francisco Bay Area, California).² Sojourners has been visiting detainees at the Elizabeth Detention Center, also owned by CCA, since 1999, while Detention Dialogues had only recently gained access to the West County Detention Center, a county-owned facility, after over a year of negotiations with ICE and county officials. I was interested not in providing sociological description of US visitation programs as a whole,³ but rather in (1) citizens' negotiations with immigration officials and, (2) how they opened up a critical vantage point for analyzing how state power. While the first two sections describe noncitizens' pathways into and out of detention, the third section

¹ ICE released families from Hutto in the fall of 2009, but continued to detain women there; the Berks County Family Shelter Care Center in Pennsylvania detained families until December 2011, and is currently preparing a new facility so that it can continue to hold families for ICE.

² Ideas for and drafts of this chapter were shared with interview and focus group participants prior to publication, and I am deeply indebted to their insights.

illuminates how immigration detention's legal geography bounds and encloses detention centers within the United States.

Enforcing Immigration: Borders, Crime, and Security

Since 1889, the US federal court system has continually reaffirmed that immigration is a trade and foreign policy matter and therefore that immigration law- and policy-making belong to the legislative and the executive branches of the US federal government. Called “the plenary doctrine,” this legal maneuver sets immigration law apart from other constitutionally bound legal regimes, limiting noncitizens' constitutional protections in immigration proceedings. Until the late 1970's, however, border and immigration enforcement did not retain a high priority in public or foreign policy-making. A series of high-profile refugee arrivals from Central America and the Caribbean stoked a growing public perception in some political quarters that the US' southern borders were “out of control.” In 1986, the Immigration Reform and Control Act instituted the first criminal penalties for immigration-related crimes into immigration law, and in the decade following, immigration law became more punitive. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) mandated detention for vague--and therefore broad--categories of documented and undocumented migrants. An ever-expanding list of “aggravated felonies” triggered mandatory detention, and the new Expedited Removal program deputized then-INS (and now ICE) officers to order certain noncitizens deported without immigration court

³ Visitation Network coordinators are, however, currently in the process of collecting this kind of data, which promises to be valuable to understanding the politics of detention at different detention centers.

review. As Coleman (2007a) argues, IIRIRA expanded spaces of immigration policing and shrunk judicial oversight and constitutional protections for noncitizens.

Immigration officials have relied primarily on the prison system for both detention expertise and infrastructure to meet the needs of mandatory detention. Emphasizing the deportation of "criminal aliens," IIRIRA linked immigration status to criminality, and expanded criminal penalties (i.e., jail time) for immigration-related violations, such as carrying false identification. Thus, the growth of immigration detention as an enforcement strategy followed the discursive and institutional linking of immigration and crime, and the bulk of new detention bed-space appeared in former prisons and military barracks. Over the same period, the US prison system also grew at an unprecedented rate, fueled by zero-tolerance and "truth-in-sentencing" laws across the country (Austin et al. 2001, Gilmore 2007). As Teresa Miller has shown, immigration and criminal justice systems borrowed from one another, rolling back court review and privileging administrative decision-making over judicial representation (Miller 2003). Expanding the discretionary authority of intermediaries like Deportation Officers and limiting judicial discretion to release noncitizens or grant residency resonates with broader shifts in governmental strategies in other countries, as Gill (2009a) as shown in the United Kingdom. In the name of 'cutting red tape,' immigration decision-making in the United States has been devolved to local jurisdictions and delegated to non-state actors, such as private prison operators. So while confinement has become a preferred method for addressing a range of public policy issues in the US, including but not limited to immigration, it also reflects broader reconfigurations of state power that increasingly embrace the proliferation of closed, opaque spaces (Gregory and Pred 2006; Paglen 2010).

Against the backdrop of "crimmigration," post-9/11 developments in domestic security governance tied immigration to national security and territorial vulnerability (Martin 2012a). For example, Customs and Border Protection (responsible for immigration apprehensions at ports of entry, territorial borders, and increasingly abroad see Coleman 2007b) reframed transboundary mobility as a counter-terrorism issue:

Prior to the terrorist attacks of 9/11, the primary focus of the Border Patrol was on illegal aliens, alien smuggling, and narcotics interdictions. ... After 9/11, it was apparent that smugglers' methods, routes, and modes of transportation are potential vulnerabilities that can be exploited by terrorists and result in terrorist weapons illegally entering the United States... [T]he potential exists for a single individual or small group to cross the border undetected with biological or chemical weapons, weapons of mass effect, or other implements of terrorism. (Emphasis added, US Customs and Border Protection 2004: 4)

The border-crossers and drug traffickers of 2000 became potential conduits for terrorist operations of 2004. Building on its 1994 "Prevention through Deterrence" Southwest Border Strategy, CBP asserted "the proper mix of assets increases the 'certainty of apprehension' of those intending to illegally cross our borders," which "has established a deterrent effect in targeted locations." Integrating the deterrence-through-deportation strategy into its Secure Border Initiative (SBI), the newly formed Department of Homeland Security (DHS) rolled out a bundle of border surveillance technologies (aka SBInet), increased border patrols, and policy changes in 2005. DHS expanded Expedited Removal from ports of entry to zones within 100 miles of the southern or coastal borders, and to all transboundary migrants caught within 14 days of arrival. Ending "catch and release policy," DHS targeted "Other Than Mexicans,"

especially Central American migrants who could not be immediately deported and for whom INS and then DRO did not have sufficient detention space. These “mission alignment” efforts linked border security to interior immigration enforcement and prosecution efforts. In a bold overstatement later retracted by the agency, the ICE Office of Detention and Removal's "Operation Endgame" sought to “deport all deportable aliens” and to “support DHS efforts to deter illegal migration” (US Immigration and Customs Enforcement 2003). ICE’s investigative sub-agencies focused on tracking and freezing trafficking assets, which included detaining and criminally charging smugglers. While these policies cannot be said to be "new" or specifically post-9/11, linking terrorism to immigration made unprecedented resources available to immigration authorities, and this expanded federal capacity has dramatically changed the conditions of everyday life for noncitizens in the United States.

New institutional relationships between local and federal law enforcement, on the one hand, and criminal and immigration systems, on the other hand, have created a new geography of enforcement. Through the "Secure Communities" program all county jails will be required to share fingerprint data with immigration agencies and to notify Immigration and Customs Enforcement (ICE) of violations (US Immigration and Customs Enforcement n.d.) by 2013. State legislatures and urban governments have taken on immigration policy-making in response to perceived shortcomings with national immigration policy (Varsanyi 2008). Furthermore, those detained at ports of entry are increasingly charged with immigration-related crimes through the Operation Streamline program (Buentello et al. 2010). Sentenced in large groups represented by a single public defendant, these migrants increasingly serve federal prison time before being transferred to immigration detention centers and deported. This widening dragnet

has led to long-term separation of families, a heightened sense of insecurity, and fear in migrant communities. In response, new and expanded immigrant rights organizations have formed to advocate for legal reform, to counter popular discourses of illegality and criminality, and to challenge specific enforcement practices (see Burrridge and Loyd 2007). The interiorization of immigration enforcement, linking of crime and immigration systems, and detention and incarceration infrastructure now play central roles in the complex political geography of exclusion in the United States.

These new and expanded immigration enforcement practices made unprecedented numbers of noncitizens detainable and deportable. To address the lack of sufficient detention space, DHS opened a number of new, primarily private detention centers in the southwest United States, contracted with county jails through Inter-Governmental Services Agreements (IGSA), and added beds to existing ICE facilities. As stated above, the T. Don Hutto Detention Center is owned by the Corrections Corporation of America, but ICE contracts with Williamson County, Texas, through an IGSA, and the county subcontracts to CCA. The West County Detention Center, discussed in the third section, is a county jail, and ICE rents bed space at the facility for immigration detainees from the county. Through these kinds of arrangements, ICE expanded the number of detention beds from 19,000 in 2005 to the current level of approximately 33,400. (ICE supervises an additional 19,000 noncitizens through “alternatives to detention” programs.) As of September 2009, ICE owned six detention centers; of the remaining 243 detention centers, 14 are privately owned, dedicated detention facilities, and others are mixed facilities holding both convicted prisoners and civil immigration detainees (US Immigration and Customs Enforcement 2009a). As more migrants became detainable, confinement has come to assume a central position in

DHS' attempts to manage "illegal pathways" and flows. Expanding detainability and bed space required a series of legal, administrative, and infrastructural changes and concretized detention's increasingly important institutional location in immigration and border enforcement. The changing geography of enforcement is linked, as I elaborate in the next section, to spatial strategies of confinement, risk calculations, and disciplinary practices that render noncitizens legible as illegal subjects.

Pathways In and Out of Detention

As a result of expanded interior immigration and border enforcement, noncitizens come into contact with ICE in a variety of ways. In addition, Arizona, Georgia, and other state-level legislatures have passed legislation requiring state institutions to check immigration status. Departments of transportation, social service agencies, schools, streets, and even banks (have become sites of surveillance, policing, and potential arrest. While these policies vary from state to state, and county to county, everyday bureaucratic activities, such as drivers' license renewals, require proof of authorized residency (Shahani and Greene 2009) and cause a blurring of historically separate social, state-level and foreign, federal policy-making (Coleman 2008, Varsanyi 2008). Since 2006, ICE has also performed workplace enforcement actions and late-night visits to noncitizens' homes (popularly known as "raids."). Noncitizens may, therefore, be rendered excludable far from the territorial border and long after entering the country. By linking with local law enforcement and a range of state institutions traditionally detached from federal law enforcement, ICE has been able to increase the potential points of contact between its agents and noncitizens (Coleman 2009).

During my research on family detention, I found that ICE detained people in a number of ways. ICE apprehended some at ports of entry, particularly those who requested asylum upon arrival. For example, a Somali mother and child crossed the Mexico-US border, and a local resident advised them not to claim asylum; the mother maintained that since her family members received asylum, she should be able to acquire asylum too. The local resident called CBP, who detained the mother and child in a temporary facility, separated them for 10 days, and then transferred them together to Hutto. Another family crossed the Mexico-US border, only to have an acquaintance call CBP, because she feared harboring them would put herself at risk. Others were picked up from their homes, and still others apprehended on city streets. In a case that became an international scandal, ICE detained a Canadian-Iranian family when their flight to Canada made an emergency landing in Puerto Rico, despite the fact that they had never intended to enter the US (Democracy Now 2007). In another instance, ICE detained a boy travelling to the US alone to join his mother. When his mother arrived to pick him up from ICE, they detained her, as well, and transferred them both to Hutto. Families' trajectories trace the geography of ICE's expanded points of contact with migrants.

Border, immigration, and other homeland security agency officers sometimes work together (though often they do not, see Hiemstra this volume), and they work for different agencies, under different mandates, and with different authority over the deportation process. Most women and families detained at Hutto were apprehended on the Mexico-US border and moved through CBP temporary holding facilities before being transferred to ICE detention centers. CBP runs a number of temporary "staging areas" and temporary detention centers that hold noncitizens for up to 72 hours. Those

caught in the interior might pass through a similar temporary detention center in an ICE office or be held for ICE at a local jail. Women currently detained at Hutto may be transferred to two or three temporary facilities before CBP transfers them to ICE. Conditions vary widely between detention centers, but federal guidelines do not require temporary facilities to have beds, consistent food, warm clothing, or hygiene facilities. Migrants passing through these facilities report sleeping on the floor, in very cold conditions, with little access to restrooms and sporadic meals. Because the 72-hour restrictions are extended for weekends and state holidays, detained women can be in temporary facilities for 3 to 10 days before being transferred to a permanent facility (Fieldnotes 2011).

After coming into contact with CBP or ICE, noncitizens face a series of categorizations that impact where they will be detained, the possibility of release, and the likelihood of their deportation. Two factors have significant bearing on noncitizens' detention trajectories: *where* and *when* they come in contact with immigration or law enforcement. Expedited Removal (ER) deputizes ICE officers to issue deportation orders to certain noncitizens without those persons seeing an immigration judge and triggers mandatory detention; ICE typically deports ER detainees in under 30 days. This timing applies to noncitizens that request asylum just as it applies to those apprehended along the southwestern border. As I explain further below, ICE classifies migrants detained at a Port of Entry, however, as "arriving aliens" and those caught inside US territory as "illegal aliens." These categories determine whether ICE will deem them eligible for release from detention on bond or parole.⁴ Noncitizens can exit Expedited

⁴ The detainee makes a monetary deposit to signify their good faith effort to pursue their immigration or asylum claim. Bond and parole amounts range from zero (rare) to 10,000, and are forfeited completely if

Removal by requesting a Credible Fear Interview, in which an asylum officer with Citizenship and Immigration Services will determine their fear of persecution, the first step in claiming gaining a hearing before a judge.

While the time and place of migrants' contact with immigration officials determines migrants' access to the immigration and/or asylum adjudication process, where they are detained and the duration of their detention, in practice, migrants' pathways into and out of detention are not entirely predictable. Placement decisions rest with individual ICE officers, and some regional field offices chose to release families or parents of US citizen children despite DHS' "catch and remove" policy (Fieldnotes 2009, 2011; and see Gill 2009a; Weber 2003). While ICE leadership provides guidelines exercising discretion (e.g. US Immigration and Customs Enforcement 2010), individual officers and field office directors are more and less sympathetic to "vulnerable populations." Even with seemingly clear-cut mandatory detention cases, ICE officers retain much discretion to detain, release, and transfer detainees. Detained women's and families' fates are, in large part, determined by the deportation officer and immigration court judge they are assigned (Fieldnotes 2010).

Privileging those within US territory over those outside of it (or in the process of passing into it), "illegal aliens" can be released from detention on bond, while "arriving aliens" can only be released on parole (see Figure 1). The difference between bond and parole is particularly important for asylum-seekers who claim asylum at a port of entry--that is, those who avoid undocumented entry and seek legal entrance under established

the detainee fails to complete the legal process. This financial risk is usually born by their families or networks, which becomes more complicated for those who do not have contacts with legal status.

humanitarian refugee law. Immigration judges determine bond eligibility and set bond amounts in noncitizens' initial hearings. ICE Deportation Officers have the discretion to set parole, however, on the basis of their evaluations of detainees' "flight risk." Hutto's Deportation Officers apply these evaluations in different ways, so that noncitizens' release on parole often depends on which officer they are assigned (*In re: Hutto Detention Center Compliance Review 2* 2008, Fieldnotes 2010). Both bond and parole require substantial financial deposits, ranging from \$1,500 to \$10,000 per person, but getting parole requires that "arriving aliens" find a sponsor to take responsibility for their welfare and court appearances. For families arriving without existing family or community support, raising this kind of money can be impossible. There is then a gap between noncitizens' formal and actual opportunities for release (see Gill 2009a, 2009b and White 2002 for similar findings in the UK). The asylum process takes from six to twelve months--longer if the case is appealed--so prohibitively expensive parole amounts guarantee long detention stays, despite a Deportation Officers' evaluation of a families' low flight risk. This differentiation affords noncitizens present in US territory more procedural rights than those who have never been admitted, and this territorial hierarchy has long been considered precedent in immigration law (Neuman 2005).

Because discretionary release is not a right, but an administrative decision made by ICE or an Immigration Judge, it is not bound by the norms of due process set out in the Constitution (*Reno v. ADC* 1999). Review and relief decisions cannot be appealed to a higher or external body. In the past, federal courts adjudicated appeals, but Congress limited these appeals to increase "administrative efficiency" and move noncitizens through the deportation process more quickly. Once detained, noncitizens are assigned an ICE Deportation Officers, and these officials decide on detainees'

options for release. Federal courts have ruled, on these grounds, that constitutional due process norms do not apply to relief hearings. Because noncitizens cannot appeal discretionary relief decisions on due process grounds, relief decisions are exempt from federal or appellate court review (Neuman 2005). ICE and immigration courts retain, therefore, discretion over noncitizens' pathways through the immigration system. Though distinct, these two forms of discretionary authority resonate and work together to limit the ability of noncitizens to appeal for relief from detention and deportation.

In addition, these different legal regimes work to continually defer liability for detention conditions. In a 2007 lawsuit against the detention of families at Hutto (*In re: Hutto Detention Center* 2007), the judge found that the former medium-security prison's architecture and daily management qualified as "prison-like" conditions; holding children there with or without their parents violated children's rights under a previous legal settlement (*Flores v. Meese* 1997). While DHS and ICE officials were legally liable for Hutto's conditions, any changes to the facility were performed by the Corrections Corporation of America (CCA), who owned and operated Hutto under contract with ICE and the local county. ICE was responsible for Hutto's conditions, but did not manage them; the county was responsible for fulfilling their contract to provide detention services to ICE, but did not operate the detention center, and CCA was accountable to the conditions of its contract with the county, but not technically accountable to detained children. As I describe in more detail below, these deferrals of legal responsibility impact outsiders' access to detention centers, as counties, ICE, and contractors continually defer to each other rather than commit to specific visitation policies.

A number of legal mechanisms structure noncitizens' pathways into and out of detention. The time and place of their apprehension determines ICE's categorization as either "arriving" or "illegal alien" which directly impacts noncitizens' options for release from detention. This categorization is followed by evaluations of flight risk, community ties, and the availability of a sponsor, which differentiates noncitizens according to institutionalized understandings of "good" and "bad" immigrants. ICE officers retain, however, discretion over noncitizens' detention, release, and transfer creating an opaque and unpredictable legal geography for noncitizens in immigration detention in the United States. One component in a larger assemblage of bordering practices, detention is a spatial practice through which transboundary migrants are contained in order to be made legible as noncitizens and either authorized or deported.

Challenging Detention

Arbitrary transfers, solitary confinement, indefinite detention stays, and detention's remoteness have elicited critical responses from diverse perspectives, from civil and international human rights to anti-racist and prison abolitionist to youth justice to employer trade associations. The geographies of policing, inter-jurisdictional law enforcement collaboration, forced mobility, and family separation have animated noncitizen communities and immigrant rights advocates across the United States, who have used public demonstrations, vigils, media campaigns, legislative advocacy, community organizing, and civil disobedience to challenge what are widely perceived to be repressive forms of state power. Among these tactics, each of which mobilize spatial politics in their own right, I focus on detention visitation here because it places authorized residents (citizens and documented noncitizens) in a direct relationship to

detained individuals in immigration proceedings, immigration and detention center staff, and detention center spaces. While they differ in scope and origin, detention visitation programs focus on detainees' emotional, bodily, and spiritual experiences of detention. These programs must also negotiate with detention center operators and ICE to gain and maintain access to detention centers, requiring specific strategies of engagement and (self-)representation (see also Moran 2011). Below, I explore how visitation illuminates detention's spatial politics. Visitors' access requires careful mediation with detention center operators, ICE, and sometimes local officials. As described above, immigration detention is largely subcontracted to private companies and county governments (who may themselves subcontract to private companies), and detention center operators have discretion over visitation policy at each detention center. While ICE provides general guidelines nationally, visitors face different policies at each detention center, revealing much about the uneven landscape of detention center conditions and management. Working to gain access to detention from "the outside," the process of visitation partially makes transparent the largely opaque spatial regulation of noncitizen populations.

Detention visitation programs have multiplied from four to sixteen since 2009 and while they take different forms they build on shared principles of companionship and solidarity. In 2009, David Fraccaro, a long-time volunteer with Sojourners' visitation program in New York City, began coordinating monthly conference calls, and the Detention Watch Network (DWN) provided visitors across the US with an email list-serve for increased communication and space on DWN's website for outreach to new programs. This national visitation network grew out of an emerging desire to address immigration detention's expansion "in our own backyards." Organizers and

advocates sought ways to reach out to and serve detained people directly, and to challenge local manifestations of national anti-immigration policies. Through the national network, visitation programs affiliate around broad principles of companionship, accompaniment, human rights, and advocacy, share best practices, and troubleshoot commonly shared barriers. Each program however develops its own approach, relationship to local detention officials, and procedures to respond to the specific arrangements at their local detention facility. While visitation programs have tended to be attached to universities and religious institutions, they are distinct from recognized religious ministries who offer services and counseling within detention centers. The visitation programs discussed here have modeled themselves on Sojourner's model of friendship, accompaniment, and witnessing and clearly position themselves against proselytizing (Detention Watch Network 2010). These programs do not offer formal legal advice, though some maintain relationships *with pro bono* legal representation and the Visitation Network encourages individual programs to collect and report information on human rights infringements.

While visitation policies differ from facility to facility, visitors face certain standard practices throughout the detention system. Detention center operators usually confine visitors to public visitation spaces, and do not allow them into detention centers' interior. While the T. Don Hutto Detention Center allows contact visits, most detention centers utilize prison-style visitation, in which visitors and detainees speak through plexiglass and telephones.⁵ Visitors are submitted to background checks and

⁵ In 2007, the ACLU and UT Law School Immigration Law Clinic sued ICE for holding families in prison-like conditions at T. Don Hutto Detention Center, located in Taylor, Texas (In re: Hutto Detention Center 2007). Contact visitation was a condition of the lawsuit's settlement, and the facility has

pass through some form of inspection, such as x-ray machines, at each detention center. Visitors cannot bring belongings in with them, except for ID and car keys. Importantly, documentation of legal residency is required for visitation. Detention center staff can revoke visitation privileges at any time for any reason. Thus, the process of visiting a detainee requires subjecting oneself to the spatial ordering and data collection regimes of the detention center. Occupying a 'liminal space' between inside and outside (Moran 2011), visitation is therefore a fraught enterprise, especially for those engaged in other forms of opposition to detention and deportation. The process embodies--for visitors and for my purposes here--the arbitrary exercise of state power, the blurring of authority between federal immigration officers and contractors, and the ways in which detention centers regulate bodies within and beyond their boundaries (see also Coutin 2010, Mountz 2010). Below I discuss these dynamics in two visitation programs.

Organizers of the campaign to close the T. Don Hutto Family Residential Facility began to explore visitation after ICE released families from Hutto in September 2009. The former medium-security prison held families with minor children from 2006-2009, but converted half of its bedspace to "noncriminal females" in 2007, when ICE found insufficient numbers of families to fill the beds (Fieldnotes 2009). When families were released, the facility converted to an all-female facility and maintained most of the adjustments made to soften the facility from a prison to a "residential facility" (see Martin 2011, 2012). Local immigrant rights organizers were concerned, however, that

maintained that policy and other reforms, championing Hutto as a "humane residential facility" (see Martin 2011, forthcoming b). In 2011, however, a former guard was convicted of sexually abusing female detainees, highlighting the gap between agency policy and contractor behavior (Wolfson and Cargile 2011).

Hutto's conditions might backslide to pre-lawsuit conditions. Hutto's *pro bono* attorneys reported that most women were separated from their families, either in their home countries or in the US, and that this isolation caused them significant stress.

Furthermore, organizers recognized that advocating around an adult population would require different tactics and a longer-term strategy, since adult detainees do not harness the same media sympathy that families had attracted.

Drawing from on the Sojourner's model, Hutto volunteers adapted the orientation manual, developed relationships with local attorneys to find detainees who wanted visits, and began training volunteers with the support of the University of Texas Community Engagement Center. Contrary to organizers' fears, CCA maintained its visitation policies from family detention, allowing visitors to see 1 or 2 women for one hour per day, as long as the visitor presented CCA with the woman's ID number. This allowed HVP volunteers to visit without seeking permission or distinct authorization from CCA or ICE. Unlike other facilities, prior authorization is not required. In 2011, HVP volunteers visited 22 women over 41 visits. The program generally has a small group of regular volunteer visitors who meet with 1-2 women per visit, and try to see the same woman each visit until she is released or deported. HVP receives names of interested women from a local Legal Orientation Program, who carries a sign-up sheet to weekly Spanish-language legal rights sessions. The program is limited, therefore, by its reliance on Spanish speakers who attend the weekly program, a matter discussed often at the organization's monthly meetings. The HVP holds monthly "report back" meetings so that visitors can troubleshoot any issues that arise; process the emotions drawn up by visiting, leaving, and very often hearing deeply troubling stories; and discuss how to better advocate for detained women.

As described above, detention center contractors stipulate visitation policy. In the county jails that detain noncitizens in immigration proceedings, detainees are subject to the prison's visitation policy, as well. In most county jails, inmates must name and request the visitor, which requires that they be in touch with said visitor by phone or mail. Telephone rates are prohibitively expensive, and detainees usually prefer to use calling cards to speak with family, rather than volunteer programs. (In many cases detainees do not have enough money for calling cards in the first place.) In contradistinction to facilities like Hutto, where visitors can request a visit without having to coordinate with the women ahead of time, county jail visitation requires phone access and money from detainees. This creates particular challenges for non-family visitors because it is difficult to establish an initial relationship with detainees sufficient to encourage them to make the request. As Detention Dialogues, a visitation program in California's San Francisco Bay area, coordinators noted, it is impossible for county jail detention visitation programs to "fly under the radar" as at Hutto, because detainees and visitors had no way of contacting each other.

To gain access to the West County Detention Center, Detention Dialogues (DD) coordinators Christina Fialho and Christina Mansfield spent over a year getting ICE's and Contra Costa County's approval, with the support of Santa Clara University's Ignatian Center. At first, Fialho and Mansfield were unsure whether ICE was holding noncitizens in the Bay Area at all, as county jails do not often advertise their presence. After a county official claimed that Santa Clara County had never had a relationship with ICE, Fialho and Mansfield filed a public records request, which revealed that the county had been detaining noncitizens since the 1990s, but had ended its contract with ICE in 2010. Through conversations with attorneys, Fialho and Mansfield eventually

located three county jails in the region holding ICE detainees: the West County Detention Facility in Contra Costa County, Sacramento County Jail, and Yuba County Jail. They approached West County staff, who referred them to ICE for permission. ICE, in turn, referred them back to the jail's administrators, a deferral process frequently encountered by visitation programs and discussed on Visitation Network conference calls. Ultimately, jail administrators stated that they did not have the budget to support a visitation program. Fialho and Mansfield convinced jail staff that they were not requesting financial resources, but instead were providing *them* no-cost services by visiting and connecting detainees to wider service provider networks. Convinced of the benefit of free social services, the jail agreed to allow the visitation program to proceed, and has allowed DD to establish a free phone extension so that detainees can request visits without a calling card. (This arrangement is based on the existing system granting detainees access to pro bono legal representation.)

The phone system works intermittently, however, sometimes connecting to voicemail instead of ringing DD offices, sometimes disconnecting, and sometimes connecting successfully. Because of these infrastructural difficulties, DD has performed two volunteer orientations, but has yet to organize actual visits to the facility. The vagaries of the telephone system requires continual interaction and negotiation between DD coordinators and jail staff, so that building working relationships with staff members has become critical to the larger mission of the visitation program. According to DD's coordinators, certain staff members have become invested in the phone system to the extent that they, too, are frustrated with its problems and now advocate for the program themselves. Creating new alliances between volunteers and staff, the visitation

program disrupts clean boundaries between interest groups and, Fialho and Mansfield argue, opens up possibilities for advocating for detained noncitizens.

The differences between the Hutto Visitation Program and Detention Dialogues are stark. The program's respective facilities are governed by a different complex of private and inter-governmental contractors, with significant consequences for visitation programs. HVP, for example, spent considerably less time and energy gaining access and has no consistent communication with Hutto staff, while DD has spent upwards of a year figuring out where ICE detainees are held, how to visit them, building relationships with staff, and implementing a phone system. The process of gaining access to detention centers reveals an uneven geography of overlapping county, state, and federal jurisdictions, private contracting, and delegated authority. These recurring, localized difficulties have led Fialho and Mansfield to focus energies on advocating for national visitation policies in order to streamline new visitors' access. By sharing best practices and comparing strategies, previously isolated visitation programs have developed a broader analysis of detention's geographies of exclusion, which in turn has catalyzed a local-national, interscalar advocacy strategy.

Conclusion

Though the US Congress has not passed new immigration legislation since 1996, expanded financial resources and policy changes have transformed the institutional and material landscapes of immigration enforcement for noncitizens. Policing immigration status in more places, CBP and ICE draw more noncitizens into custody, and Expedited Removal's expansion triggers mandatory detention for more noncitizens. Once in the detention system, noncitizens face limited opportunities for release. While the Obama administration has committed to locating new detention

centers near legal resources (US Immigration and Customs Enforcement 2009b), ICE has contracted the vast majority of its detention centers in remote areas, where legal representation and familial support is scarce. The lack of proximity to advocacy groups in more populated areas decreases the chances for sustainable visitation programs for detainees, constituting a deviously shrewd form of spatial “distance decay” on the part of private and state institutions. Once detained, noncitizens are subject to arbitrary transfers, often to federal districts where judges are unsympathetic to asylum or relief claims (Morawetz 2004). Detainees' categorizations as "illegal" or "arriving aliens" differentiate access to release options further, based on the time and place of contact with border/immigration enforcement. Thus pathways into and out of detention are determined by a combination of institutional resources, agency policy-making, officers' individual decision-making, and individuals' case details. This is a complex carceral and legal geography, in which noncitizens' rights are limited and the federal government's discretion to detain is extended in and through immigration law. Noncitizens are "illegalized" (De Genova 2002) through this assemblage of legal mechanisms, enforcement tactics, and discursive formations, and spatiotemporality of detention renders them excludable "by geographical design" (Mountz 2010). These relations of power are spatialized through the disciplining, forced mobility, and confinement of certain bodies; the production of surveillance, transportation, and detention infrastructure; and the territorialization of certain forms of nationhood and state power.

This chapter has traced two different legal geographies of US immigration detention: noncitizens' pathways into and out of detention, and authorized residents' access to detainees and detention centers. Mediating the relationship between detainees

and the wider population of authorized residents, these release and visitation policies reveal the high degree of discretion Department of Homeland Security agencies hold over the detention process. Decisions about individual migrants' cases are ostensibly guided by immigration legislation's admission and exclusion rules, yet ICE's wide discretion to decide who to detain, where, and when allows them to delegate detention functions to county jail and private corrections staff who would otherwise have no authority to enforce immigration law. The process of exclusion, or the inscribing of national boundaries onto mobile noncitizen bodies, unfolds through an assemblage of legal categorizations, discretionary release decisions, visitation policies, and multi-jurisdictional governance relationships.

While detention disciplines noncitizens through surveillance and containment, it also works on noncitizens' relationships and communities, on visitors, on the potentially detainable, and on the deported (Coleman 2008, Coutin 2010, Hiemstra 2010 & this volume, Mountz 2010, Zilberg 2011). Detention's disciplinarity is not therefore confined to the detention center itself, but acts upon and through wider networks of intimacy, support, and forced mobility (Conlon 2010, Martin 2012a). Detention is not only “a doing,” as Gregory (2006) argues, but a spatial practice through which federal agencies mark both the difference between authorized and unauthorized bodies and the state's power to maintain that boundary. The regulation of detainees' and visitors' movement into and out of detention spatializes this bordering process, stretching the size, shape, and scope of the border itself and localizing it far from the territorial limits of the nation-state.

APPENDIX A: Acronyms

CBP Customs and Border Patrol

CCA Corrections Corporation of America

CFI Credible Fear Interview

DD Detention Dialogues

DHS Department of Homeland Security

DRO Detention and Removals Office

ER Expedited Removal Program

ICE Immigration and Customs Enforcement

INS Immigration and Naturalization Service

IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act

USCIS US Citizenship and Immigration Service

SBI Secure Border Initiative

References

- Austin, J and M. Bruce, L. Carroll, P. McCall, S. Richards. 2001. The Use of Incarceration in the United States. *Critical Criminology* 10,17-41.
- Buentello, T. and S. Carswell, N. Hudson, B. Libal. 2010 *Operation Streamline: Drowning Justice and Draining Dollars along the Rio Grande*. Grassroots Leadership. Available at: <http://grassrootsleadership.org/OperationStreamline/wp-content/uploads/2010/08/Operation-Streamline-Green-Paper.pdf>. Accessed 10 January, 2012.
- Burridge, A. and Loyd, J. 2007. La Gran Marcha: Anti-racism and Immigrant Rights Southern California. *ACME: An International E-Journal for Critical Geographies* 6(1), 1-35.
- Coleman, M. 2007. A Geopolitics of Engagement: Neoliberalism and the War on Terrorism at the Mexico-US Border. *Geopolitics* 12(4), 607-634.
- Coleman, M. 2008. Between Public and Foreign Policy: US Immigration Law Reform and the Undocumented Migrant. *Urban Geography* 29(1), 4-28.
- Coleman, M. 2009. What Counts as the Politics and Practice of Security and Where? Devolution and Insecurity After 9/11. *Annals of the Association of American Geographers*. 99(5), 1-10.
- Conlon, D. 2010. Ties that bind: governmentality, the state, and asylum in contemporary Ireland. *Environment and Planning D: Society and Space* 28: 95-111.
- Coutin, S.B. 2010. Confined within: National territories as zones of confinement. *Political Geography*. 29(4), 200-208.
- De Genova, Nicholas. 2002. "Migrant 'Illegality' and Deportability in Everyday Life." *Annual Review of Anthropology*. 31, 419-47.
- Democracy Now. 2007. 'I Want to be Free': 9-Year-Old Canadian Citizen Pleads From Texas Immigration Jail. [Online] February 23, 2007. Available at: http://www.democracynow.org/2007/2/23/i_want_to_be_free_9. [accessed 12 January 2011].
- Detention Watch Network. 2010. *Visiting Immigrants in U.S. Detention Facilities Manual*. Available at: <http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/Detention%20Visitation%20Manual.pdf>. [accessed 4 April 2012].
- Flores v. Meese Settlement*. 1997. Case No. CV 85-4544-RJK(Px). Available at: http://www.aclu.org/pdfs/immigrants/flores_v_meese_agreement.pdf. [accessed 17 June 2012]

Gill, N. 2009a. Presentational state power: temporal and spatial influences over asylum sector decisionmakers. *Transactions of the Institute of British Geographers* 34, 215-233.

Gill, N. 2009b. Governmental mobility: The power effects of the movement of detained asylum seekers around Britain's detention state. *Political Geography* 28, 186-196.

Gilmore, R. W. 2007. *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley: University of California Press.

Gregory, D. 2006. The black flag: Guantánamo Bay and the space of exception. *Geografiska Annaler, Series B: Human Geography*. 88 (4), 405-427.

Gregory, D. and A. Pred. 2006. *Violent Geographies: Fear, Terror and Political Violence*. London: Routledge Press.

Hiemstra [this volume]

Hiemstra, N. 2010. Immigrant "Illegality" as Neoliberal Governmentality in Leadville, Colorado. *Antipode* 42(1), 74-102.

In re Hutto Family Detention Center. 2007. Case No. A-07-CA-164-SS. Available at: <http://www.aclu.org/immigrants/detention/315041gl20070826.html>. [accessed August 30, 2009].

Martin, L. 2011. The Geopolitics of Vulnerability: Migrant Families in U.S. Immigrant Family Detention Policy. *Gender, Place, & Culture*. 18(4), 477-498

Martin, L. 2012a. Catch and Return: Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice." *Geopolitics* 17(2): 17(2), 312-334.

Martin, L. 2012b. Governing through the Family: Struggles over US Noncitizen Family Detention Policy. *Environment and Planning A* 44(4), 866-888.

Miller, T. 2003. Citizenship and Severity: Recent Immigration Reforms and the New Penology. *Georgetown Immigration Law Journal* 17, 611-666.

Moran, D. 2011. Between outside and inside? Prison visiting rooms as liminal carceral spaces. *GeoJournal* Published online December 4, 2011.

Morawetz, N. 2004. Detention Decisions and Access to Habeas Corpus for Immigrants Facing Deportation. *Boston College Third World Law Journal*. 25,13-33.

Mountz, A. 2010. *Seeking Asylum: Human Smuggling and Bureaucracy at the Border*. Minneapolis: University of Minnesota Press.

Neuman, G. 2005. Discretionary Deportation. *Georgetown Immigration Law Journal* 20, 611-666.

Reno v. AADC 1999. 525 U.S. 471.

- Shahani, A. and J. Greene. 2009. *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*. Brooklyn, NY: Justice Strategies.
- Paglen, T. 2010. *Invisible: Covert Operations and Classified Landscapes*. New York: Aperture Press
- US Customs and Border Protection. 2004. *National Border Patrol Strategy*. Department of Homeland Security: Washington, D.C.
- US Immigration and Customs Enforcement n.d. *Secure Communities*. [Online] Available at: http://www.ice.gov/secure_communities/ [accessed 11 January 2012].
- US Immigration and Customs Enforcement. 2003. *Endgame: Office of Detention and Removal Strategic Plan, 2003-2012*. US Department of Homeland Security: Washington, D.C.
- US Immigration and Customs Enforcement. 2009a. *Immigration Detention Overview and Recommendations (by Dora Schriro)* Department of Homeland Security: Washington, DC.
- US Immigration and Customs Enforcement. 2009b. Press Release. August 6, 2009. Washington, D.C.
- US Immigration and Customs Enforcement. 2010. Memo: Civil Immigration Enforcement: Priorities for Apprehension, Detention, and Removal of Aliens. Policy No. 10072.1 On file with author.
- Varsanyi, M. 2008. Immigration Policing Through the Backdoor: City Ordinances, the "right to the City," and the Exclusion of Undocumented Day Laborers. *Urban Geography* 29(1), 29-52.
- Weber, L. 2003. Down that Wrong Road: Discretion in Decisions to Detain Asylum Seekers Arriving at UK Ports. *Howard Journal of Criminal Justice* 42, 248-262.
- White, A. 2002. "Geographies of asylum, legal knowledge and legal practices." *Political Geography*. 21(8), 1055-1073.
- Wolfson, S. and Cargile, E. 2011. Former guard takes plea deal for abuse: T. Don Hutto case not closed in Williamson County. KXAN.com 17 May 2011. Available at: <http://www.kxan.com/dpp/news/crime/Decision-day-in-T-Don-Hutto-abuse-case>. Accessed 11 January 2012.
- Zilberg, E. 2011. *Space of Detention: The Making of a Transnational Gang Crisis between Los Angeles and San Salvador*. Durham, NC: Duke University Press.

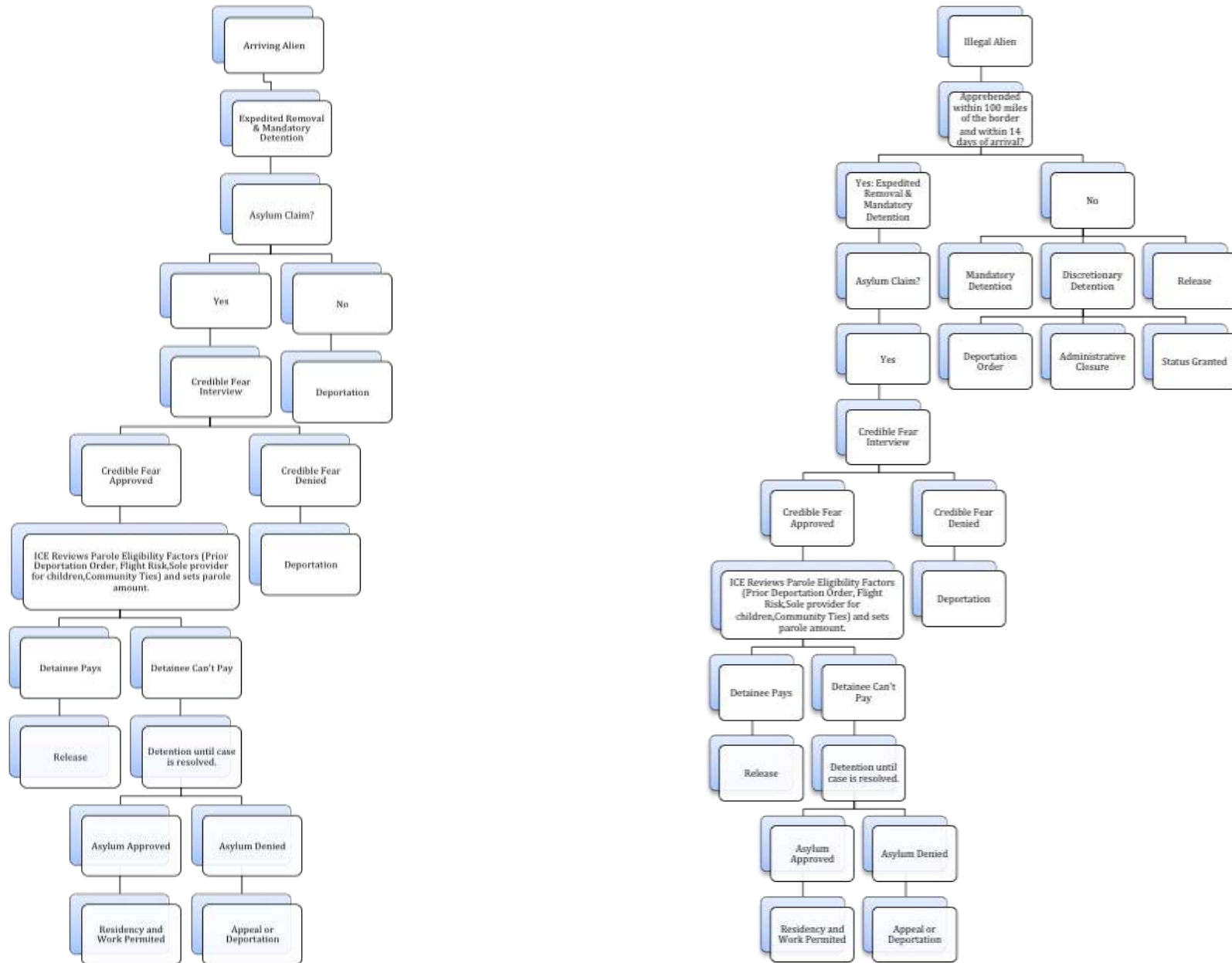


Figure 1: Flow Chart of Release, Detention, and Deportation Decisions for Arriving and Illegal Aliens in the US Immigration System

